

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00185-16
45-003-14-1-5-01218-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-427-012.000-003
Assessment Years: 2013 & 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2014 assessments of his property located at 2541 Jennings Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$2,300 for both years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On March 25, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card for 2015-2018
Petitioner Exhibit B: Property record card for 2008-2015
Petitioner Exhibit C: Aerial map
Petitioner Exhibit D: Aerial map
 - b. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances----where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. There was no change in the property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 will be determined based on the outcome of the 2013 appeal.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. When he acquired the property in 2009, it was over-assessed at \$2,300. Since that time the Assessor has come down to \$1,400 in 2016, which is lower than his requested value of \$1,600. He is happy to accept the \$1,400 from 2016 forward, but is looking for some relief on the over-assessments for 2013 and 2014. *Nowacki testimony; Pet'r Exs. A & B.*
 - b. The property is on the edge of an EPA site. If there is going to be some value, it might be a long time coming because of the location. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor contends that Nowacki's offered no evidence to support a change of value for either year and the values should remain unchanged. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2014 assessments. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the 2013 and 2014 assessments was March 1st of each assessment year. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property should be assessed for \$1,600 for each year at issue. However, he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner failed to make a prima facie case for changing the assessments. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Based on the lack of change to the 2013 assessment, Nowacki had the burden for 2014. He failed to make a prima facie case to support changing the assessment for 2014.
- e. Finally, we give no weight to his claims regarding the property’s decreasing assessment. The Assessor’s decision to decrease the property’s assessment in subsequent years does not prove that the 2013 and 2014 assessments were incorrect. As the Tax Court has explained, “each tax year—and each appeal process--- stands alone.” *Fisher v. Carroll County Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year has little bearing on its true tax value in another. *See e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E. 2d 800, 805 n. 14 (Ind. Tax Ct. 1998).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property’s 2013 and 2014 assessments.

ISSUED: June 4, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.